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No. 75-1161

[redacted]

Petitioners,

v.

[redacted]

Respondents.

[redacted]

Petitioners,

v.

[redacted]

Respondents.

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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1181

RICHARD A. BATTERTON, ET AL.,
Petitioners,

v.

ROBERT FRANCIS, ET AL.,
Respondents.

RICHARD A. BATTERTON, ET AL.,
Petitioners,

v.

BARRY BETHEA, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

I. *Batterton v. Francis*

August 9, 1971—Plaintiffs Wilkens' and Francis' Complaint filed in United States District Court for the District of Maryland.

August 10, 1971—Application of Plaintiffs For Three-Judge Court.

August 10, 1971—Motion of Defendants In Opposition to Plaintiffs' Application For A Three-Judge Court.

August 18, 1971—Motion of Plaintiff Wilkens to Withdraw as Party Plaintiff.

August 18, 1971—Order Granting Plaintiff Wilkens leave to Withdraw As Party.

August 19, 1971—Notification And Request of District Judge for Constitution Of Three-Judge Court.

August 19, 1971—Order by Chief Judge of Fourth Circuit Court of Appeals Designating Members of Three-Judge Court.

August 23, 1971—Motion of United States Chamber of Commerce For Leave to Participate As Amicus Curiae.

August 23, 1971—Petition of Defendants For Request of Views of United States Department of Health, Education, and Welfare.

August 24, 1971—Motion of Plaintiffs for Summary Judgment.

August 25, 1971—Request of District Court that the United States Secretary of Health, Education and Welfare State His Views On Issues Involved.

August 25, 1971—Order that United States Chamber of Commerce May Participate As Amicus Curiae.

August 30, 1971—Motion of Edward Wright for Leave to Intervene As A Party Plaintiff.

August 30, 1971—Order Granting Edward Wright Leave to Intervene As Party Plaintiff.

August 30, 1971—Intervenor's Complaint.

September 7, 1971—Motion of Defendants Requesting Redefinition Of Class and Designation of Subclasses.

September 7, 1971—Motion of Defendants In Opposition to Plaintiffs' Motion for Summary Judgment and Defendants Cross Motion for Summary Judgment.

September 13, 1971—Opposition of Plaintiffs to Motion Requesting Redefinition of Class and Designation of Subclasses.

September 14, 1971—Memorandum Amicus Curiae of the Department of Health, Education and Welfare.

September 16, 1971—Hearing on Plaintiffs Motion for Summary Judgment.

January 28, 1972—Memorandum and Order of District Court Denying Injunction.

February 9, 1972—Motion of Plaintiffs For Immediate and Final Injunctive Relief.

February 23, 1972—Memorandum and Order Denying Motion for Immediate and Final Injunctive Relief and Changing Page of Opinion.

March 1, 1972—Motion of Plaintiffs To Reconsider Denial and Motion For Immediate and Final Injunctive Relief.

March 1, 1972—Defendants Opposition to Plaintiffs Motion To Reconsider Denial of Motion For Final Injunctive Relief.

March 1, 1972—Hearing on Plaintiffs' Motion to Reconsider Denial of Final Injunctive Relief.

March 6, 1972—Order of District Court Granting Plaintiffs Motion For Final Injunctive Relief and Enjoining Defendants as Requested.

March 8, 1972—Notice of Appeal of Defendants to Supreme Court of the United States.

March 30, 1972—Amended Notice of Appeal of Chamber of Commerce of the United States to The Supreme Court of the United States.

November 15, 1972—Order of Affirmance By the Supreme Court, dated October 16, 1972.

September 14, 1972—Defendants' Motion to Dissolve Injunction Previously Issued.

October 23, 1973—Plaintiffs Opposition to Motion To Dissolve Injunction.

October 24, 1973—Motion For Intervention on Behalf of the Chamber of Commerce of the United States of America.

November 1, 1973—Plaintiffs' Opposition to Motion of the Chamber of Commerce of the United States of America To Intervene.

December 10, 1973—Letter Opinion of District Court Granting Motion To Dissolve Injunction.

December 13, 1973—Motion of Plaintiffs for Reconsideration of Opinion of December 10, 1973.

December 28, 1973—Opposition of Defendants to Motion For Reconsideration.

January 3, 1974—Hearing on Motion To Dissolve Injunction and Motion to Reconsider Opinion of December 10, 1973.

January 8, 1974—Order Requesting Department of Health, Education, and Welfare to State Its Views.

January 31, 1974—Order Granting Motion to Intervene of the Chamber of Commerce of the United States of America.

April 26, 1974—Continued Hearing on Motion To Dissolve Injunction and Motion to Reconsider Opinion of December 10, 1973.

June 25, 1974—Opinion of Court Denying Defendants' Motion To Dissolve Injunction.

July 22, 1974—Notice of Appeal of Intervenor, Chamber of Commerce, to The Supreme Court.

July 22, 1974—Notice of Appeal of Intervenor, Chamber of Commerce, to The Court of Appeals.

July 25, 1974—Notice of Appeal of Defendants to The Supreme Court.

July 25, 1974—Notice of Appeal of Defendants to The Court of Appeals.

January 9, 1975—Entry of Order of Supreme Court, dated December 9, 1974, Dismissing Appeal of Defendants.

February 27, 1975—Entry of Order of Supreme Court Dismissing Appeal of Intervenor, Chamber of Commerce.

October 23, 1975—Order of Judgment of Court of Appeals, dated September 22, 1975, Affirming Opinion of District Court.

II. *Batterton v. Bethea*

August 29, 1973—Complaint of Plaintiff Barry Bethea Filed in the United States District Court for the District of Maryland.

August 29, 1973—Application of Plaintiff For Convening of Three-Judge Court.

October 26, 1973—Motion of Plaintiff For Certification As A Class Action.

November 12, 1973—Response of Defendant to Motion For Certification As A Class Action.

November 12, 1973—Motion of Defendant to Dismiss.

November 12, 1973—Opposition of Defendant to Application for Convening of Three-Judge Court.

November 16, 1973—Motion of Plaintiff For Summary Judgment.

October 4, 1974—Hearing on All Pending Motions.

November 27, 1974—Memorandum Opinion Denying Defendant's Motion to Dismiss and Granting Plaintiffs' Motion For Summary Judgment.

December 12, 1974—Judgment of Court Granting Plaintiffs' Motion for Class Certification and Ordering Defendants to Pay Benefits to Plaintiff and Others in His Class.

January 6, 1975—Notice of Appeal By Defendant to Court of Appeals.

October 17, 1975—Copy of Judgment of Court of Appeals, dated September 22, 1975, Affirming Judgment of District Court.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

In the United States District Court
for the District of Maryland

Civil Action No. 71-853-K

Franklin Wilkens, individually and on behalf of his minor child Mary E. Wilkens, 1901 West North Avenue, Baltimore, Maryland 21217,

and

Robert Francis, individually and on behalf of his minor children, Robert J. Francis, Mary P. Francis, Elizabeth S. Francis, Michael J. Francis, James J. Francis, and Veronica H. Francis, 1428 Bonsal Street, Baltimore 21224,

Individually and on behalf of all other persons similarly situated,

Plaintiffs,

v.

Rita C. Davidson, Secretary, Department of Employment and Social Services, 1100 North Eutaw Street, Baltimore, Maryland 21201,

and

Raleigh C. Hobson, Director, Social Services Administration, 1315 St. Paul Street, Baltimore, Maryland 21202,

Individually and in their official capacities,

Defendants.

I. Introductory Statement

Plaintiffs, individually and on behalf of all others similarly situated, seek to have this Court declare invalid and enjoin enforcement of Rule 200-X (A) (2) of the Maryland Department of Employment and Social Services. This Rule denies to children who are otherwise "dependent" within the meaning of Section 407 of the Social Security Act — and therefore eligible for benefits — their statutory right to receive services and financial assistance pursuant to the Social Security Act when their fathers are disqualified from receiving unemployment benefits. Because the State Rule imposes a condition for eligibility beyond those enumerated in the Act, it must be held invalid. Furthermore, the Rule establishes a class of individuals who are denied benefits without any rational basis for such classification in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

II. Jurisdiction

The jurisdiction of this Court arises under sections 1343 (3) and (4) of Title 28 of the United States Code, which provides for the original jurisdiction of this Court in all suits authorized by section 1983 of Title 42 of the United States Code to redress the deprivation under color of state law of any right, privilege, or immunity secured by the Constitution of the United States or any Act of Congress providing for equal rights or civil rights of all persons within the jurisdiction of the United States.

Plaintiff's action for declaratory and injunctive relief is authorized by:

(a) Sections 2201 and 2202 of Title 28 of the United States Code and Federal Rule of Procedure 25, which relate to declaratory judgments' and

(b) Section 1983 of Title 42 of the United States Code which provides redress for the deprivation under color of law of rights, privileges and immunities secured to all citizens and persons within the jurisdiction of the United States by the Constitution thereof and by the Acts of Congress.

III. Three-Judge Court

This is a proper case for determination by a three-judge court pursuant to Sections 2281 and 2284 of Title 28 of the United States Code since the plaintiffs herein seek a permanent injunction of a rule or regulation of state-wide applicability made by an administrative body under the authority of a State statute on the ground that the regulation is contrary to the provisions of the limitation of the United States.

IV. Plaintiffs

1. Named plaintiff Franklin Wilkens resides at 1901 West North Avenue, Baltimore, Maryland and is a United States citizen. As set forth below, Mr. Wilkens has been found disqualified for benefits under the Maryland unemployment compensation program and accordingly, pursuant to State rule, is ineligible for benefits under the State's Aid to Families with Dependent Children of Unemployed Fathers (AFDC-E). Mr. Wilkens is the father of Mary Wilkens, a minor, and sues both individually and on her behalf.

2. Named plaintiff Robert Francis resides at 1428 Bonsal Street, Baltimore, Maryland, and is a United States citizen. As set forth below, Mr. Francis' union is presently on strike; he accordingly is disqualified from benefits under the Maryland unemployment compensation program. Because of this disqualification, Mr. Francis and his children are ineligible for the States AFDC-E benefits. Mr. Francis sues on his own behalf and on behalf of his minor children, Robert J. Francis, Mary P. Francis, Elizabeth S. Francis, Michael J. Francis, James J. Francis and Veronica H. Francis.

V. Defendants

1. Defendant Rita C. Davidson is the Secretary of the Maryland Department of Employment and Social Services.

2. Defendant Raleigh C. Hobson is Director of the Social Services Administration.

3. The above-named defendants are charged under the laws of the State of Maryland with enforcement, operation and execution of laws pertaining to public assistance grants, including Maryland Department of

Social Services Laws and Rule 200-X (a)(2), which is herein challenged as being in conflict with the Constitution of the United States and Social Security Act.

VI. Class Action

The named Plaintiffs bring this action on behalf of themselves and, pursuant to Federal Rules of Civil Procedure 23 (a) and (b) (2), on behalf of all other persons similarly situated. The members of this class are those needy and dependent children, who are otherwise eligible for benefits and services under section 407 of the Social Security Act (relating to Aid to Families with Dependent Children), but who are denied those benefits because their fathers are disqualified from receiving unemployment benefits from the Maryland Department of Employment and Social Services. This class is so numerous that joinder of all members is impossible and impracticable. The questions of law and fact are common to all members of the class. The claim of the named plaintiff is typical of the claims of all the members of the class. The named plaintiff will fairly and adequately protect the interests of the class. The Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

VII. Factual Allegations

1. Plaintiff Robert Francis had been employed for approximately the last twenty years by American Smelting and Refining Company, Highland and Eastbourne Avenues, Baltimore, Maryland, as a laboratory technician.

2. On July 1, 1971, Mr. Francis' union struck his plant, and Mr. Francis has honored that strike.

3. As a result of the strike, Mr. Francis is presently unemployed and receiving no financial support.

4. Through his prior employment, Mr. Francis worked more than six quarters in any 13-calendar-quarter period ending within the last year.

5. Mr. Francis has not refused a bona fide offer of employment since his layoff.

6. Mr. Francis is now without any income to support his wife, who due to illness is unable to work, and his six children, aged six to thirteen. The Francis family is eating off food stamps and is unable to pay the numerous periodic bills which have become due in the past months. Mr. Francis receives no financial union strike benefits.

7. Mr. Francis, through union representatives, was informed of his disqualification from public assistance benefits for strikers as set forth in Section 6(e) of the Maryland State Unemployment Insurance Law.

8. Mr. Francis' application for AFDC-E benefits for his wife and six children was denied by the Baltimore City Department of Social Services on July 6, 1971. Under Rule 200-X(A)(2) of the Maryland Department of Employment and Social Services, AFDC-E benefits are not available to the families of fathers disqualified from receiving unemployment compensation.

9. Mr. Francis, his wife, and his children are suffering immediate and irreparable harm due to defendants' refusal to grant him AFDC-E benefits.

10. Plaintiff, Franklin Wilkens' employment as a porter and janitor was terminated on June 22, 1971, by the Baltimore Business Forms Company.

11. Through his prior employment, Mr. Wilkens worked more than six quarters in any 13-calendar-quarter period ending within the last year.

12. Mr. Wilkens has not refused a bona fide offer of employment since the termination of his job in June, 1971.

13. Mr. Wilkens' application to the Maryland Employment Security Administration for unemployment compensation was rejected on the ground that his termination was due to misconduct for excessive absenteeism pursuant to Section 6 of the Maryland State Unemployment Compensation Law. This denial was for a nine-week period ending August 28, 1971. That decision is presently being appealed.

14. Mr. Wilkens applied to the Baltimore City Department of Social Services for a grant for himself and his family, Mrs. Mary Jackson, with whom he

lives, their child, Mary Wilkens, and Mrs. Jackson's child, Eric Jackson. Mr. Wilkens was given an emergency grant of $196.00, but was denied continuing AFDC-E assistance.

15. The aforementioned Rule 200-X(A)(2) also acts to prevent Mr. Wilkens and his family from receiving AFDC-E benefits.

16. Mr. Wilkens and his family are presently receiving no source of income. In similar past situations they have borrowed from relatives. The family is living off of food stamps and is unable to meet its numerous monthly bills which have come due.

17. Mr. Wilkens and his family are suffering immediate and irreparable harm due to defendants' refusal to grant him AFDC-E benefits.

VIII. First Cause Of Action

For a first cause of action Plaintiffs allege:

1. Rule 200-X(A)(2) of the Maryland Department of Employment and Social Services prohibits the payment of funds under the program for assistance to children of unemployed fathers (AFDC-E) "to meet need due to being disqualified for unemployment insurance."

Section 407(b)(1)(c)(i) of the Social Security Act, 42 U.S.C. Section 607(b)(1)(c)(i), authorizes federal funding for an AFDC-E state program "if the State's plan . . . requires the payment of aid . . . when . . . [the] father has six or more quarters of work . . . in any 13-calendar-quarter ending within one year prior to the application for such aid. . . ."

3. The Department of Health, Education, and Welfare has implemented regulations which further state this requirement. 42 C.F.R. 233.100(a)(3)(iii) mandates that "the State plan must . . . provide for payment of aid with respect to any child when the conditions set forth in subdivisions (i), (ii), and (iii) of this subparagraph are met. . . ." Subparagraph (iii) reiterates the requirement of aid to those fathers who have engaged in "six or more quarters of work . . . within any 13-calendar-quarter period ending one year prior to the application for such aid. . . ."

4. The above-cited state Rule is in direct contradiction with the above-cited federal requirements because it excludes from benefits a portion of the children of fathers who have worked six or more quarters within a 13-quarter period ending one year prior to application, namely those whose fathers have been determined by the state to be disqualified for unemployment compensation.

5. The federal statute and regulation clearly prohibit the imposition of eligibility requirements other than those specified in the Act. The State Rule is therefore invalid because it defines eligibility in a manner inconsistent with federal requirements. In denying benefits in this fashion to plaintiffs and their class, defendants have breached their federally imposed obligation requiring "that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals. . . ." 42 U.S.C. Section 302(a)(10).

IX. Second Cause Of Action

For a second cause of action plaintiffs allege:

1. By denying aid to children whose fathers are disqualified from receiving unemployment compensation, the state Rule establishes two categories of claimants: (1) those dependents of otherwise eligible fathers who are ineligible for unemployment compensation and (2) those dependents of otherwise eligible fathers who (a) are eligible for unemployment compensation but have exhausted their benefits, (b) are temporarily disabled, and (c) are underemployed as defined by HEW regulations.

2. No adequate State justification exists for this arbitrary classification scheme which acts to deny plaintiffs' class its statutory benefits. It is accordingly invalid under the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

X. Third Cause Of Action

For a third cause of action plaintiffs allege:

By denying aid to children whose fathers are disqualified from receiving unemployment compensation, defendants have established an arbitrary classification which denies entitlements owing to plaintiffs and their class without due process of law as required by the Fourteenth Amendment to the United States Constitution.

XI. Prayer For Relief

WHEREFORE, plaintiffs respectfully request, on behalf of themselves and all others similarly situated, that this Honorable Court:

1. Convene a three-judge district court pursuant to 28 U.S.C. Sections 2281 and 2284 to determine this controversy, and set this case down promptly for hearing.

2. Certify that this action is maintainable as a class action, pursuant to Fed. R. Civ. P. 23(c)(1).

3. Pending a hearing and determination by the three-judge court, grant a temporary restraining order pursuant to 28 U.S.C. Section 2284(3) restraining defendants, their successors in office, agents and employees, and all other persons in active concert and participation with them, from continuing to cause irreparable harm to plaintiffs and other persons similarly situated by refusing to grant them AFDC-E benefits in the amounts to which they are entitled and that otherwise would be available to them except for the fact that they disqualified from receiving unemployment compensation benefits.

4. Enter a final judgment pursuant to 28 U.S.C. Sections 2201 and 2202 declaring that Rule 200-X(A)(2) of the Maryland Department of Employment and Social Services is invalid on the grounds that it is violative of provisions contained in the Fourteenth Amendment to the Constitution of the United States and the Social Security Act.

5. Enter preliminary and permanent injunctions, pursuant to Fed. R. Civ. P. 65, enjoining defendants, their successors in office, agents and employees, and all other persons in active concert and participation with them from refusing to grant to plaintiffs and all persons similarly situated AFDC-E benefits in the amounts to which they are entitled on the grounds that

they are disqualified from receiving unemployment compensation.

6. Order the defendants, their successors in office, agents, and employees to notify promptly by first class mail at their last known address all persons who have been denied AFDC-E benefits to which they were entitled but for their disqualification from receiving unemployment compensation that they are now eligible for such benefits and to grant immediately such benefits to these persons.

7. Grant plaintiffs and all those similarly situated such additional or alternative relief as justice and equity so require, including payment of all monies wrongfully withheld.

Respectfully submitted,

C. Christopher Brown,
Curtis L. Decker,
H. Maxwell Hersch,
Legal Aid Bureau, Inc.
Law Reform Unit,
412 North Bond Street,
Baltimore, Maryland 21231,
Phone: 675-5990,
Attorneys for Plaintiffs.

MOTION FOR SUMMARY JUDGMENT

[Caption Omitted in Printing]

Plaintiffs, through counsel, move this court for an order granting summary judgment in favor of plaintiffs and in support thereof state: (1) that, as indicated by the attached statement, there is no geniune issue as to any material fact in this case and (2) that, as indicated by the attached memorandum, all questions of law must be decided in favor of plaintiffs.

WHEREFORE, plaintiffs pray that judgment be entered for plaintiffs and that this court:

1. Enter a final judgment pursuant to 28 U.S.C. §§ 2201 & 2202 declaring that Rule 200-X(A)(2) of the Maryland Department of Employment and Social Services is invalid on the ground that it is violative of

the provisions contained in the Fourteenth Amendment to the Constitution of the United States and the Social Security Act.

2. Enter preliminary and permanent injunctions, pursuant to Fed. R. Civ. P. 65, and enjoining defendants, their successors in office, agents and employees, and all other persons in active concert and participation with them from refusing to grant to plaintiffs and all persons similarly situated AFDC-E benefits in the amounts to which they are entitled on the grounds that they are disqualified from receiving unemployment compensation.

3. Order the defendants, their successors in office, agents, and employees to notify promptly by first class mail at their last known address all persons who have been denied AFDC-E benefits to which they were entitled but for their disqualification from receiving unemployment compensation that they are now eligible for such benefits and to grant immediately such benefits to these persons.

4. Grant plaintiffs and all those similarly situated such additional or alternative relief as justice and equity so require, including payment of all monies wrongfully withheld.

Respectfully submitted,

C. Christopher Brown,
Curtis L. Decker,
H. Maxwell Hersch,
Legal Aid Bureau, Inc.
Law Reform Unit,
412 North Bond Street,
Baltimore, Maryland 21231,
Phone: 675-5990,
Attorneys for Plaintiffs.

MOTION OF EDWARD WRIGHT FOR LEAVE TO INTERVENE AS PARTY PLAINTIFF

[Caption Omitted in Printing]

Edward Wright, through his attorneys, hereby seeks leave, pursuant to Fed. R. Civ. P. 24 (a)(2), to intervene

into the above-captioned suit as a party-plaintiff. In support of this motion, the applicant for intervention refers to the attached points and authorities and to his lodged complaint.

Respectfully submitted,

C. Christopher Brown,
Curtis L. Decker,
H. Maxwell Hersch,
Legal Aid Bureau, Inc.
Law Reform Unit,
412 North Bond Street,
Baltimore, Maryland 21231,
Telephone: 675-5990,
Attorneys for Plaintiffs.

INTERVENORS' COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

[Caption Omitted in Printing]

I. Jurisdiction

The jurisdiction of this Court arises under 28 U.S.C. §§ 1343 (3) and (4), which provides for the original jurisdiction of this Court in all suits authorized by 42 U.S.C. § 1983 to redress the deprivation under color of state law of any right, privilege, or immunity secured by the Constitution of the United States or any Act of Congress providing for equal or civil rights of all persons within the jurisdiction of the United States.

Plaintiff's action for declaratory and injunctive relief is authorized by:

(a)—28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57, which relate to declaratory judgments and

(b)—42 U.S.C. § 1983 which provides redress for the deprivation under color of law of rights, privileges and immunities secured to all citizens and persons within the jurisdiction of the United States by the Constitution thereof and by the Acts of Congress.

II. Intervenors

1. Edward Wright resides at 2874 Harford Road, Baltimore, Maryland, 21218 and is a citizen of the United States and the State of Maryland. As set forth below, Mr. Wright was discharged from his job; he accordingly is disqualified from benefits under the Maryland unemployment compensation program. Because of this disqualification Mr. Wright and his family are ineligible for the State's AFDC-E benefits. Mr. Wright sues on his own behalf and on behalf of his minor child, Edward Wright, Jr.

III. Defendants

1. Defendant, Rita C. Davidson, is the Secretary of the Maryland Department of Employment and Social Services.

2. Defendant, Raleigh C. Hobson, is Director of the Social Services Administration.

3. The above-named defendants are charged under the laws of the State of Maryland with enforcement, operation and execution of laws pertaining to public assistance grants, including Maryland Department of Social Services Laws and Rule 200-X(A)(2), which is herein challenged as being in conflict with the Constitution of the United States and Social Security Act.

IV. Class Action

The named Intervening Plaintiffs bring this action on behalf of themselves and, pursuant to Fed. R. Civ. P. 23(a) and (b)(2), on behalf of all other persons similarly situated. The members of this class are those needy and dependent children, who are otherwise eligible for benefits and services under section 407 and the Social Security Act (relating to Aid to Families with Dependent Children), but who are denied those benefits because their fathers are disqualified from receiving unemployment benefits from the Maryland Department of Employment and Social Services. This class is so numerous that joinder of all members is impossible and impracticable. The questions of law and fact are common to all members of the class. The claim of the named plaintiff is typical of the claims of all the members of the class. The named plaintiff will fairly

and adequately protect the interests of the class. The Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

V. Factual Allegations

1. Until May 12, 1971, Edward Wright was employed by Wagoner Construction Company, 3639 Benson Avenue, Baltimore, Maryland, as a carpenter.

2. On May 12, 1971, Mr. Wright was discharged for excessive absenteeism, and is presently unemployed.

3. Through his prior employment Mr. Wright worked more than six quarters in any 13-calendar-quarter period ending within the last year.

4. Mr. Wright has not refused a bona fide offer of employment since he left work.

5. Mr. Wright is now without any income to support his wife, who due to illness is unable to work, and his son aged fifteen. Mr. Wright received one welfare check on July 6, 1971 and is unable to pay the numerous periodic bills which have become due in the past months.

6. Mr. Wright applied for unemployment benefits on July 7, 1971, and was disqualified due to excessive absenteeism until he becomes re-employed and earns at least ten times his weekly benefit amount ($630.00).

7. Mr. Wright received a public assistance grant for himself, his wife and child in July. When he applied in August he was refused due to his disqualification for unemployment.

8. Mr. Wright, his wife and child are suffering immediate and irreparable harm due to defendants' refusal to grant him AFDC-E benefits.

VI. First Cause Of Action

For a first cause of action the Intervening Plaintiffs allege:

1. Rule 200-X(A)(2) of the Maryland Department of Employment and Social Services prohibits the payment of funds under the program for assistance to children of

unemployed fathers (AFDC-E) "to meet need due to being disqualified for unemployment insurance."

2. Section 407(b)(1)(c)(i) of the Social Security Act, 42 U.S.C. Section 607(b)(1)(c)(i), authorizes federal funding for an AFDC-E state program "if the State's plan . . . requires the payment of aid . . . when . . . [the] father has six or more quarters of work . . . in any 13-calendar-quarter period ending within one year prior to the application for such aid . . ."

3. The Department of Health, Education, and Welfare has implemented regulations which further state this requirement. 42 C.F.R. 233.100(a)(3)(iii) mandates that "the State plan must . . . provide for payment for aid with respect to any child when the conditions set forth in subdivisions (i), (ii), and (iii) of this subparagraph are met. . . ."

4. The above-cited state Rule is in direct contradiction with the above-cited federal requirements because it excludes from benefits a portion of the children of fathers who have worked six or more quarters within a 13-quarter period ending one year prior to application, namely those whose fathers have been determined by the state to be disqualified for unemployment compensation.

5. The federal statute and regulation clearly prohibit the imposition of eligibility requirements other than those specified in the Act. The State Rule is therefore invalid because it defines eligibility in a manner inconsistent with federal requirements.

VII. Second Cause Of Action

For a second cause of action intervening plaintiffs allege:

1. By denying aid to children whose fathers are disqualified from receiving unemployment compensation, the state Rule establishes two categories of claimants: (1) those dependents of otherwise eligible fathers who are ineligible for unemployment compensation and (2) those dependents of otherwise eligible fathers who (a) are eligible for unemployment compensation but have exhausted their benefits, (b) are temporarily disabled, and (c) are underemployed as defined by HEW regulations.

2. No adequate State justification exists for this arbitrary classification scheme which acts to deny plaintiffs' class its statutory benefits. It is accordingly invalid under the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

VIII. Third Cause Of Action

For a third cause of action plaintiffs allege:

By denying aid to children whose fathers are disqualified from receiving unemployment compensation, defendants have established an arbitrary classification which denies entitlements owing to intervening plaintiffs and their class without due process of law as required by the Fourteenth Amendment to the United States Constitution.

IX. Prayer For Relief

WHEREFORE, intervening plaintiffs respectfully request, on behalf of themselves and all others similarly situated, that this Honorable Court:

1. Convene a three-judge district court pursuant to 28 U.S.C. Sections 2281 and 2284 to determine this controversy, and set this case down promptly for hearing.

2. Certify that this action is maintainable as a class action, pursuant to Fed. R. Civ. P. 23(c)(1).

3. Pending a hearing and determination by the three-judge court, grant a temporary restraining order pursuant to 28 U.S.C. Section 2284(3) restraining defendants, their successors in office, agents and employees, and all other persons in active concert and participation with them, from continuing to cause irreparable harm to plaintiffs and other persons similarly situated by refusing to grant them AFDC-E benefits in the amounts to which they are entitled and that otherwise would be available to them except for the fact that they disqualified from receiving unemployment compensation benefits.

4. Enter a final judgment pursuant to 28 U.S.C. Sections 2201 and 2202 declaring that Rule 200-X(A)(2) of the Maryland Department of Employment and Social Services is invalid on the grounds that it is violative of

provisions contained in the Fourteenth Amendment to the Constitution of the United States and the Social Security Act.

5. Enter preliminary and permanent injunctions, pursuant to Fed. R. Civ. P. 65, enjoining defendants, their successors in office, agents and employees, and all other persons in active concert and participation with them from refusing to grant to plaintiffs and all persons similarly situated AFDC-E benefits in the amounts to which they are entitled on the grounds that they are disqualified from receiving unemployment compensation.

6. Order the defendants, their successors in office, agents, and employees to notify promptly by first class mail at their last known address all persons who have been denied AFDC-E benefits to which they were entitled but for their disqualification from receiving unemployment compensation that they are now eligible for such benefits and to grant immediately such benefits to these persons.

7. Grant plaintiffs and all those similarly situated such additional or alternative relief as justice and equity so require, including payment of all monies wrongfully withheld.

Respectfully submitted,

C. Christopher Brown,
Curtis L. Decker,
H. Maxwell Hersch,
Legal Aid Bureau, Inc.
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412 North Bond Street,
Baltimore, Maryland, 21231,
Phone: 675-5990,
Attorneys for Plaintiffs.

MOTION IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, AND DEFENDANTS' CROSS MOTION FOR SUMMARY JUDGMENT

[CAPTION OMITTED IN PRINTING]

Defendants, by their counsel, move this Honorable Court for an Order denying plaintiffs' Motion For Summary Judgment in their favor, and that of their class as defined in accordance with defendants' Motion requesting redefinition of the same, and further move this Honorable Court, pursuant to Rule 56 (b) of the Federal Rules of Civil Procedure, for an Order granting summary judgment in favor of defendants.

In support of the foregoing, defendants aver (a) that there is no genuine issue as to any material fact in this case and (b) that, as shown by the attached Affidavits and Memorandum, all questions of law must be determined favorable to defendants.

WHEREFORE, defendants respectfully pray that judgment be entered for them, and that this Honorable Court:

1. Enter a final judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that Rule 200 X.A.2 of the Social Services Administration, Maryland Department of Employment and Social Services is valid and does not violate the Fourteenth Amendment to the Constitution of the United States or the Social Security Act;

2. Deny named and intervening plaintiffs' petitions for preliminary and permanent injunctions, pursuant to Fed. R. Civ. P. 65, both of which seek to enjoin defendants, their successors in office, agents and employees, and all other persons in active concert and participation with them, from refusing to grant to said plaintiffs, and all persons similarly situated, AFDC-E benefits on the grounds that they are disqualified from receiving unemployment compensation;

3. Deny plaintiffs' request to order the defendants, their successors in office, agents, and employees to notify all persons who have been denied AFDC-E benefits by reason of their disqualification from receiving unemployment compensation, and declare that such persons are not eligible for such benefits;

4. Deny to plaintiffs, and all those similarly situated, any other relief, including payment of monies withheld by reason of the application of the aforesaid Rule 200 X.A.2; and

5. Define the subclasses of plaintiffs in this action in accordance with defendants' Motion in respect to the same.

/s/ Francis B. Burch,
Attorney General,
/s/ Richard G. McCauley,
Assistant Attorney General,
/s/ Joel Rabin,
Assistant Attorney General,
/s/ Judson P. Garrett, Jr.,
Assistant Attorney General,
1400 One South Calvert Bldg.,
Baltimore, Maryland 21202,
383-3737,
Attorneys for Defendants.

MOTION FOR IMMEDIATE AND FINAL INJUNCTIVE RELIEF

[Caption Omitted in Printing]

Plaintiff Norman Lockhart, through his attorney, and on behalf of all those persons similarly situated, hereby moves the Court to grant immediate and final injunctive relief restraining defendants and their agents from refusing to grant plaintiff and his class Social Security (AFDC-E) benefits if they qualify for these benefits in all ways other than the fact that they are disqualified from receiving unemployment compensation. In support of this application, plaintiff refers to the attached affidavit and memorandum.

Respectfully submitted,

C. Christopher Brown,
Law Reform Unit
Legal Aid Bureau, Inc.,
412 North Bond Street,
Baltimore, Maryland 21231,
Telephone: 675-5990,
Attorney for Plaintiffs.

DEFENDANTS' MOTION TO DISSOLVE THE INJUNCTION PREVIOUSLY ISSUED

[Caption Omitted in Printing]

The Defendants respectfully move this Court, pursuant to Fed. R. Civ. P. 60(b), to dissolve the injunction previously issued herein, since it is no longer equitable that the injunction have prospective application. In support of this Motion, Defendants respectfully refer this Court to the facts and legal argument set forth in the Memorandum attached hereto and hereby made a part of this Motion.

Respectfully submitted,

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383-5614.

MOTION FOR INTERVENTION ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

[Caption Omitted in Printing]

Pursuant to Rules 24(a) and (b) of the Federal Rules of Civil Procedure, the Chamber of Commerce of the United States of America hereby moves to intervene in this case for the limited purpose of assuring that all interests will be adequately represented, should an appeal be taken by one of the present parties. In support of this motion, the Chamber states:

1. This Court previously enjoined the State of Maryland from refusing to grant certain federal welfare

benefits to applicants who were unemployed due to their involvement in labor disputes. See *Francis v. Davidson*, 340 F. Supp. 351 (D.C. Md., 1972). The basis for the Court's decision was that the Maryland eligibility rule conflicted with federal regulations governing the program. Because the federal regulations have since been amended to remove this conflict, Defendants have recently moved this Court to dissolve the previously issued injunction referred to, *supra*. The Chamber supports, adopts, and incorporates by reference that motion.

2. While Chamber does not intend to inject issues, it does seek to intervene at this stage of the proceedings for the limited purpose of protecting the unique economic stake of its membership in the event that one of the parties appeals this Court's decision on the pending motion. This Court has already recognized the interests of the Chamber by permitting it the status of an *amicus curiae* with full participatory rights. The question remains, however, whether the Chamber will be able to defend those same interests should either the State or the Plaintiffs appeal.[1] The Supreme Court has recognized that in the area of labor relations administrative agencies, such as defendants herein, are inadequate to protect simultaneously both private and public interests of aggrieved persons, such as the Chamber's membership. *Int'l Union, etc., Local 283 v. Scofield*, 382 U.S. 205, 217 n.7 (1965). See also, e.g., *Hodgson v. United Mine Workers of America*, 473 F.2d 118, 125 (1972); *Wolpe v. Poretsky*, 144 F.2d 505 (D.C. Cir. 1944); *Zuber v. Allen*, 387 F.2d 862 (D.C., Cir. 1967); *Smuck v. Hobson*, 408 F.2d 175 (D.C. Cir. 1969). In the past other courts have often recognized the benefit, if not necessity, of the Chamber's participation in order to protect the interests of employers generally and to

[1] Any "fear that . . . intervention would lead to a flood of intervenors . . . is . . . unfounded." Schapiro, *Some Thoughts On Intervention Before Agencies and Arbitrators*, 81 Harv. L. Rev. 721, 747 (1968). Naturally once the employers' interest represented by the Chamber is, in this Court's view, adequately represented, no other person can claim a "right" to intervene (See Rule 24(a), F.R.C.P.; *Textile Workers v. Allendale* 226 F.2d at 768, n.10) or need be permitted to intervene. Rule 24(b), F.R.C.P.

insure a complete presentation of views which might not be presented by other parties. See, for example, *Grinnell Corp. v. Hackett, et al.*, 344 F. Supp. 749, rev'd 475 F.2d 449 (1st Cir. 1973); and *Russo v. Kirby*, 355 F. Supp. 122, *rev'd*, 453 F.2d 548 (2d Cir. 1971).

3. The stake of the Chamber's membership is clear. The Court's ruling on the pending motion to dissolve the injunction involved herein directly affects the relative collective bargaining strengths of management and unions. Accordingly, the result of this litigation will have a direct economic impact upon the Chamber's membership. See, *Dow Chemical Company and Chamber of Commerce v. Taylor*, — F. Supp. —, 81 LRRM 2872 (E.D. Mich. 1972), and *Textile Workers v. Allendale*, 226 F.2d 765 (D.C. Cir. 1955). The Chamber does not seek, however, to inject issues not now before the Court, but only to protect its membership's economic stake in these post-judgment proceedings, should an appeal be taken. See *Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, 386 U.S. 129 (1967) where the effect of economic competition was recognized as allowing intervention in post-judgment proceedings.

4. In light of the limited purpose of the Chamber's motion, i.e., to defend an appeal, no prejudice to the parties can result, and intervention should be permitted "as a matter of course." *Wolpe v. Poretsky*, 144 F.2d 505 (D.C. Cir. 1944). Indeed, alternatively an order conditioning the Chamber's intervention upon the filing of a notice of appeal by one of the other parties would be acceptable. Accordingly there could not exist any countervailing factors to preclude granting the instant motion.

WHEREFORE, The Chamber of Commerce of the United States of America respectfully urges that its motion for leave to intervene in this proceeding be granted.

Respectfully submitted,

MILTON A. SMITH,
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RICHARD B. BERMAN,
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10 Light Street,
Baltimore, Maryland 21202,
Attorneys for The Chamber of Commerce of the United States of America.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

In The United States District Court
For the District of Maryland

Civil Action No. 73-874-H

Barry Bethea, individually and on behalf of his minor child, Barry Bethea, Jr., 3929 Edmondson Avenue, Baltimore, Maryland, Individually and on behalf of all persons similarly situated,

Plaintiffs,

v.

David T. Mason, Secretary Department of Employment and Social Services 1100 North Eutaw Street, Baltimore, Maryland 21201, Individually and in his official capacity,

Defendant.

Plaintiffs, individually and on behalf of their class, seek to have this court declare invalid and enjoin enforcement of Rule 200 X.A.2 of the Maryland Department of Employment and Social Services insofar as it denies Aid to Families with Dependent Children and an Employable Father (AFDC-E) to those families whose fathers have been denied unemployment compensation.

I. Jurisdiction

1. The jurisdiction of this court arises under 28 U.S.C. §§ 1343(3) and (4), which provide for its jurisdiction in all suits authorized by 42 U.S.C. § 1983 to redress the deprivation under color of state law of any right, privilege, or immunity secured by the Constitution of

the United States or any Act of Congress providing for equal rights or civil rights of all persons within the jurisdiction of the United States.

2. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202, concerning declaratory judgments, and 42 U.S.C. § 1983, which provides redress for the deprivation under color of law of rights privileges, and immunities secured to all citizens and persons within the jurisdiction of the United States by the United States Constitution and by Acts of Congress.

II. Plaintiffs

Barry Bethea currently resides with his family in Baltimore, Maryland. He and his child are United States citizens. As set forth below, Mr. Bethea has been declared by defendant to be ineligible for benefits under Maryland's Aid to Families with Dependent Children of Unemployed Fathers (AFDC-E) program because he had allegedly voluntarily quit his job without good cause. Mr. Bethea is the father of Barry Bethea, Jr., a minor, and sues both individually and on his child's behalf.

III. Defendant

1. Defendant David Mason is the Secretary of the Maryland Department of Employment and Social Services.

2. He is charged under the laws of the State of Maryland with enforcement, operation, and execution of laws pertaining to public assistance grants, including Maryland Department of Social Services Laws and Rule 200 X.A.2, which is herein challenged as being in conflict with the Constitution of the United States and the Social Security Act.

IV. Class Action

The named plaintiffs bring this action on behalf of themselves and, pursuant to Fed. R. Civ. P. 23(a) and (b) (2), on behalf of all other persons similarly situated. The members of this class are those needy and dependent children who are otherwise eligible for benefits and services under Section 407 of the Social

Security Act (relating to Aid to Families with Dependent Children), but who are denied those benefits because their fathers are not eligible to receive unemployment benefits from the Maryland Department of Employment and Social Services. This class is so numerous that joinder of all members is impossible and impracticable. The questions of law and fact are common to all members of the class. The claims of the named plaintiffs are typical of the claims of all the members of the class. The named plaintiffs will fairly and adequately protect the interests of the class. Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

V. Three-Judge Court

This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284 since plaintiffs seek an injunction to restrain defendant, a state officer, from the enforcement, operation, and execution of a rule or regulation of state-wide applicability on the ground that it is contrary to the Constitution of the United States.

VI. Factual Allegations

1. Plaintiff, Barry Bethea, was last employed as a truck driver/deliveryman at Montebello Liquors in Baltimore, working four days a week and earning an average net weekly income of $76.00. On or about July 3, 1973, Mr. Bethea's employment with Montebello Liquors was terminated.

2. The incident which provoked Mr. Bethea's termination occurred after he noticed some liquor missing from his truck and failed to immediately report the missing liquor to the company, although he did report it immediately to the police. Because he had not reported it on the Saturday on which it was stolen and waited until the following Monday, primarily because the liquor store was closed until Monday, Mr. Bethea was told that he would have to pay for the stolen goods himself. Feeling that this was an unjust result, Mr. Bethea resigned his job.

3. Upon losing his job, Mr. Bethea applied to the Maryland Employment Security Administration for unemployment compensation.

4. On or about July 24, 1973, the Employment Security Administration rejected Mr. Bethea's application for unemployment insurance because it found him disqualified because he had allegedly "voluntarily quit his job without good cause." This is a ground for disqualification under Section 6 of the Maryland Unemployment Insurance Law, Article 95A Maryland Code Annotated. The ruling denied Mr. Bethea benefits for the week of June 29, 1973 and the following nine weeks.

5. Mr. Bethea then applied to the Department of Social Services for a public assistance AFDC-E grant.

6. Although he was given $167.00 as an emergency grant, he was ruled ineligible to receive continuing assistance, AFDC-E, because he had been denied unemployment compensation.

7. In denying Mr. Bethea AFDC-E benefits, defendant's agents acted in reliance on Maryland Department of Employment and Social Services Rule 200 X.A.2.

8. Mr. Bethea has been unsuccessfully trying to obtain employment since he left his last job in July. He has not turned down any bona fide offer of employment since that time.

9. Because the Betheas have no income, they have been forced to abandon their apartment. Because they could not pay the rent, they left their apartment under the threat of eviction. They are now forced to reside with Mr. Bethea's mother-in-law.

10. Because of their lack of income, the Betheas are forced to live off of the gratuities of Mr. Bethea's mother-in-law.

11. Unless the Betheas can become eligible for AFDC-E benefits, they will continue to suffer irreparable harm due to defendant's refusing to grant them these benefits.

12. Defendant and his agents have acted and continue to act pursuant to agency rule to deny AFDC-E benefits to all persons in Maryland who would

otherwise be eligible for AFDC-E benefits but for being denied unemployment insurance benefits due to voluntarily quitting their job.

VII. FIRST CLAIM

For a first claim plaintiffs allege:

1. Rule 200 X.A.2 of the Maryland Department of Employment and Social Services prohibits the payment of funds under the program for assistance to children of unemployed fathers (AFDC-E) to meet need due to being disqualified for unemployment insurance.

2. The application of this rule has been declared invalid by this court insofar as it affects those who have lost their jobs due to misconduct or a labor dispute. *Francis v. Davidson*, 340 F. Supp. 351 (D. Md. 1972), *aff'd* 409 U.S. 907 (1972). Defendant has interpreted *Francis*, however, to not nullify the rule insofar as it applies to those who have voluntarily quit their jobs.

3. Section 407(b)(1)(c)(i) of the Social Security Act, 42 U.S.C. §607(b)(1)(c)(i), authorizes federal funding for an AFDC-E state program "if the State's plan . . . requires the payment of aid . . . when . . . [the] father has six or more quarters of work . . . in any 13-calendar-quarter period ending within one year prior to the application for such aid. . . ."

4. The above-cited Maryland Rule is in direct contradiction with the above-cited federal requirements because it excludes from benefits a portion of the children of fathers who have worked six or more quarters within a 13-calendar-quarter period ending one year prior to application, namely those whose fathers have been determined by the state to be disqualified for unemployment conpensation due to a voluntary job loss.

5. The federal statute prohibits the imposition of eligibility requirements other than those specified in the Act. The state rule is therefore invalid because it defines eligibility in a manner inconsistent with federal requirements. In denying benefits in this fashion to plaintiffs and their class, defendant has breached his federally imposed obligation requiring "that aid to families with dependent children shall be furnished

with reasonable promptness to all eligible individuals. . . ." 42 U.S.C. §602(a)(10).

VIII. SECOND CLAIM

For a second claim plaintiffs allege:

1. By denying aid to children whose fathers are disqualified from receiving unemployment compensation due to voluntarily quitting their job, the state rule establishes two categories of claimants: (1) those dependents of otherwise eligible fathers who are ineligible for unemployment compensation solely for this reason and (2) those dependents of otherwise eligible fathers who (a) are eligible for unemployment compensation but have exhausted their benefits, (b) are temporarily disabled, (c) are underemployed as defined by HEW regulations, or (d) are ineligible for unemployment compensation because they are on strike or lost their job due to misconduct.

2. No adequate state justification exists for this arbitrary classification scheme which acts to deny plaintiffs' class its statutory benefits. It is accordingly invalid under the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

IX. PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request, on behalf of themselves and all others similarly situated, that this Honorable Court:

1. Certify that this action is maintainable as a class action, pursuant to Fed. R. Civ. P. 23(c)(1).

2. Order the convening of a three-judge court to hear this case.

3. Pending a hearing and determination by this court, grant preliminary relief restraining defendant, his successors in office, agents and employees, and all other persons in active concert and participation with him from continuing to cause irreparable harm to plaintiffs and other persons similarly situated by refusing to grant them AFDC-E benefits in the amounts to which they are entitled and that otherwise would be available to them except for the fact that they are not

eligible to receive unemployment compensation benefits.

4. Enter a final judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that Rule 200 X.A.2 of the Maryland Department of Employment and Social Services is invalid on the ground that it is violative of provisions contained in the Fourteenth Amendment of the Constitution of the United States and the Social Security Act.

5. Enter a permanent injunction, pursuant to Fed. R. Civ. P. 65, enjoining defendant, his successors in office, agents and employees, and all other persons in active concert and participation with them from refusing to grant to Plaintiffs and all persons similarly situated AFDC-E benefits in the amounts to which they are entitled on the grounds that they are disqualified from receiving unemployment compensation.

6. Order defendant, his successors in office, agents and employees to notify promptly by first class mail at their last known address all persons who have been denied AFDC-E benefits to which they were entitled but for their disqualification for such benefits and to grant immediately such benefits to these persons.

7. Grant plaintiffs and all those similarly situated such additional or alternative relief as justice and equity so require.

Respectfully submitted,

C. Christopher Brown,
Law Reform Unit
Legal Aid Bureau, Inc.,
341 North Calvert Street,
Baltimore, Maryland 21202,
Telephone: 685-1112,
Attorney for Plaintiffs.

MOTION TO DISMISS

[Caption Omitted in Printing]

The defendant moves the court in the alternative as follows:

1. To dismiss the action for want of jurisdiction on the ground that the complaint fails to raise a substantial constitutional question and, in the absence thereof, this Court does not have subject matter jurisdiction under either 28 U.S.C. 1343(3) or (4) to entertain a claim arising solely out of the Social Security Act.

2. To dismiss the action for want of jurisdiction and/or failure to state a claim upon which relief can be granted insofar as the complaint seeks monetary relief from the State of Maryland or the defendant as an officer thereof.

3. To dismiss the action insofar as it seek to hold David T. Mason individually liable on the ground that the complaint fails to state a claim upon which such relief can be granted.

Respectfully submitted,

Francis B. Burch,
Attorney General of Maryland,
One Sourth Calvert Street,
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383-3737,
Joel J. Rabin,
Assistant Attorney General &
Counsel to the Department of
Employment & Social Services,
Judson P. Garrett, Jr.,
Theodore Losin,
Assistant Attorneys General,
1100 North Eutaw Street,
Baltimore, Maryland 21201,
383-3508,
Attorneys for Defendant.

MOTION FOR SUMMARY JUDGMENT

[Caption Omitted in Printing]

Plaintiffs, through counsel, move this court for an order granting summary judgment in their favor and in support thereof state: (1) there is no genuine issue as to any material fact in this case and (2) as indicated by the attached memorandum, all questions of law must be decided in plaintiffs' favor.

WHEREFORE, plaintiffs pray that judgment be entered for plaintiffs and that this court:

1. Enter a final judgment pursuant to 28 U.S.C. §§ 2201 & 2202 declaring that Rule 200-X(A)(2) of the Maryland Department of Employment and Social Services is invalid insofar as it denies AFDC-E benefits to the children of fathers who have been found ineligible for unemployment insurance benefits due to allegedly voluntarily leaving their prior employment on the ground that it is violative of the equal protection provisions contained in the Fourteenth Amendment to the Constitution of the United States and is violative of the Social Security Act.

2. Enter preliminary and permanent injunctions, pursuant to Fed. R. Civ. P. 65, enjoining defendant, his successors in office, agents and employees, and all other persons in active concert and participation with him from refusing to grant to plaintiffs and all persons similarly situated AFDC-E benefits in the amounts to which they are entitled on the grounds that they are disqualified from receiving unemployment compensation due to voluntarily leaving a prior job.

3. Order the defendant, his successors in office, agents, and employees to notify promptly by first class mail at their last known address all persons who have been denied AFDC-E benefits to which they were entitled but for their disqualification from receiving unemployment compensation that they are now eligible for such benefits and to grant immediately such benefits to these persons.

4. Grant plaintiffs and all those similarly situated such additional or alternative relief as justice and

equity so require, including payment of all monies wrongfully withheld.

Respectfully submitted,

C. Christopher Brown,
341 North Calvert Street,
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685-1112,
Attorney for Plaintiffs.

RELEVANT PORTIONS OF LEGISLATIVE HISTORY OF SECTION 407(a), AS AMENDED

1. Committee Print, Summary of Provisions of H.R. 12080, The "Social Security Amendments of 1967," House Comm. on Ways and Means, pp. 12-13:

> Under present law, the States can establish programs for families with dependent children based on the unemployment of a parent and receive Federal matching. The definition of unemployment is left up to the individual States. Under the bill, Federal matching would be available only for the children of unemployed fathers and the definition of unemployment would be made by the Federal Government.

2. S. Rep. No. 744, 90th Cong., 1st Sess., Comm. on Finance, Social Security Amendments of 1967, pp. 4 and 160:

> the bill would . . . (c) modify the optional unemployed fathers program to provide for a uniform definition of employment throughout the United States. (*Id.* at 4)
>
> . . .
>
> A major characteristic of the existing law is the authority left to the States to define "unemployment." The committee believes that this has worked to the detriment of the program because of the wide variation in the definitions used by the States. In some instances, the definitions have been very narrow so that only a few people have

been helped. In other States, the definitions have been relatively broad. The committee bill is designed to correct this situation and to make other improvements in the program.

The amendments proposed by the committee would authorize a Federal definition of unemployment by the Secretary and would tie the program to the work incentive program established by the bill. (*Id.* at 160)

3. Explanation of the Conference Committee Report on the Social Security Amendments of 1967 by Rep. Mills, Cong. Rec. H16863, Vol. 113, Part 27, pp. 3673, 3674 (Dec. 13, 1967):

The amendments provide that under State programs of aid to families with dependent children of unemployed parents, Federal matching would be available only for the children of unemployed fathers. Under present law States may include children on the basis of the unemployment of mothers, as well as fathers. The amendments also provide that the Secretary will prescribe standards for the determination of what constitutes unemployment. The term is defined by the States under present law.

4. Committee Print, Brief Summary of Major Provisions and Detailed Comparison with Prior Law, The Social Security Amendments of 1967 — Public Law 248, 90th Congress, U.S. Senate Comm. on Finance, pp. 3 and 63 (July 25, 1968):

The amendments provide for a Federal definition of unemployment for States which have AFDC-UF programs. (*Id.* at 3)

. . .

Limits the program to children who need support or care on the basis of the unemployment of the father. Unemployment will be defined by the Secretary of Health, Education, and Welfare. (*Id.* at 63)

5. Joint Committee Print, Summary of Social Security Amendments of 1967, U.S. Senate Comm. on Finance and House Comm. on Ways and Means, p. 17 (Dec. 1967):

The amendments provide that under State programs of aid to families with dependent children of unemployed parents, Federal matching would be available only for the children of unemployed fathers. Under present law States may include children on the basis of the unemployment of mothers, as well as fathers. The amendments also provide that the Secretary will prescribe standards for the determination of what constitutes unemployment. The term is defined by the States under present law.

6. Statement by Wilbur J. Cohen, Under Secretary of HEW before U.S. Sen. Comm. on Finance, Hearing on Social Social Amendments of 1967, Part I, page 268, August 23, 1967 (App. 39), p. 8:

The 1961 Social Security Amendments for the first time permitted assistance payments to children who were needy because their father was unemployed. Today, 22 States have programs to assist such children. But the differences between State programs are great. States may define unemployment as narrowly or broadly as they wish, requiring substantial previous work experience or no work experience. This variation in definition of unemployment is shown clearly by three adjacent southwestern States, Arizona, Utah, and Colorado. Each of these States has a population of between 1 and 2 million, yet in Arizona only 19 families of unemployed parents received AFDC in May, while during the same month there were 880 in Utah and 1,600 in Colorado. Arizona's narrow definition of unemployment has kept its program to a token level.

The House bill continues to allow States to choose whether they will include dependent children of unemployed parents under AFDC. But for the first time the House bill would set a Federal definition of unemployment. We are in complete agreement that there should be a Federal definition of unemployment.

7. H. Rep. No. 544, 90th Cong., 1st Sess., Comm. on Ways and Means, pp. 17, 108, and 175:

> Under present law, the States can establish programs for families with dependent children based on the unemployment of a parent and receive Federal matching. The definition of unemployment is left up to the individual States. Under the bill, Federal matching would be available only for the children of unemployed fathers and the definition of unemployment would be made by the Federal Government. (*Id.* at 17)
>
> . . .
>
> A major characteristic of the law is the authority left to the States to define "unemployment." Your committee believes that this has worked to the detriment of the program because of the wide variation in the definitions used by the States. In some instances, the definitions have been very narrow so that only a few people have been helped. In other States, the definitions have gone beyond anything that the Congress originally envisioned. Your committee's bill is designed to correct this situation and to make other improvements in the program.
>
> The overall objective of the amendments proposed by the committee is to authorize a Federal definition of unemployment by the Secretary (but within certain limits set forth in the legislation). . . . (*Id.* at 108)
>
> . . .
>
> The new section 407(a) of the act redefines a "dependent child" for purposes of such section 407 as one whose deprivation results from the unemployment (as determined in accordance with standards prescribed by the Secretary) of his father and who meets the other eligibility conditions. (*Id.* at 175)